

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bellofatto	
Application No.: 10/696,963	Art Unit: 3728
Filed: 10/30/2003	Examiner: Mohandesi, Jila M
Title: PADFOLIO WITH TAPERED ELASTIC OUTER POCKET	
Attorney Docket No.: 059863/0040	

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October 30, 2007

Honorable Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 CFR 41.41

Dear Sir:

In response to the Supplemental Examiner's Answer mailed August 30, 2007, please consider the following reply brief, which addresses the response to argument (10) of the supplemental examiner's answer:

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(1) REAL PARTY IN INTEREST

The real party in interest is The Gem Group, Inc. d/b/a GEMLINE, the assignee of record.

(2) RELATED APPEALS AND INTERFERENCES

None.

(3) STATUS OF CLAIMS

Claims 1-20 have been cancelled.

Claims 21-25 are currently pending, as they have been rejected to. Claims 21-25 are being appealed.

(4) STATUS OF AMENDMENTS

Amendment after final action under 37 CFR 1.116

Amendment filed January 12, 2007 containing amended claims presented in better form for consideration on appeal under 37 CFR §1.116(b)(2), filed with the notice of appeal. The amendment, as indicated in the Office communication mailed February 6, 2007, fails to place the application in condition for allowance. However, the amendment did overcome the 35 USC 112, second paragraph rejection.

For purposes of appeal, the proposed amendments (to the claims) will be entered. Claims 21-25 are currently pending.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

Claim 21

Claim 21 claims a padfolio (see FIG. 1 or 2) comprising: a pair of opposing covers **104**, **202** (see FIG. 2) joined together by a spine **108**; an exterior pocket **102** formed by a flap **140** joined along a base edge **160**; the flap including a front edge **164** and two side edges **162**, each side edge having a recess taper; and a pair of elastic strips **170**.

The exterior pocket **102** is illustrated in FIG. 1 and is explained on page 3, lines 3-4. The exterior pocket **102** is along an exterior face cover **132**, as explained on page 3, lines 3-4. This exterior cover **104** is joined by a spine **108** to an opposing exterior cover **202** (see page 3, lines 4-6). The materials and characteristics of the joints between the sections of the padfolio are described in further detail on page 3, in lines 6-8. The materials used for the padfolio itself, including the covers **104** and **202** is explained in further detail on page 3 in lines 8-14.

The exterior pocket **102** is formed by a flap **140** that is described in greater detail in the specification, page 4 line 9 – page 5 line 2. Materials and alternative approaches used to construct the flap **140** are described in detail on page 4, lines 9-18. The base of the flap **140** is fixedly attached to the spine **108** at a bottom or base seam edge **160** (see page 4 lines 19-22). The flap **140** includes a front edge **164** and two side edges **162** (see page 4 lines 21-24). These side edges **162** extend at a gap from the bottom edge **160** to provide a taper toward the front edge **164**. See page 4 lines 24-28 and page 5 lines 18-23 for more detail on the taper of the flap **140**.

The padfolio further comprises a pair of elastic strips **170** connected between each side edge **162** and the exterior surface **132**. In this manner, the front edge **164** and the two side edges

162 are unattached to the cover **104, 202**, except by the pair of elastic strips **170**. The elastic strips **170** are described in greater detail on page 5, lines 5-17, 24-30 and page 6, lines 1-10.

Claim 22

Claim 22 claims a padfolio (see FIG. 1 or 2) comprising: a flap **140** attached adjacent to a spine **108** where the flap creates a base edge **160**, two side edges **162** and a front edge **164**, the front edge **164** being unattached to the exterior cover **132**; an outer perimeter edge **130** stitched on the exterior cover **132**; the two side edges **162** being unattached except by a pair of elastic strips **170** and including a taper defined as a gap (see page 5 lines 18-23).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 21-24 are unpatentable under 35 USC 102 as being anticipated by Seamon.

Whether claims 21-25 are unpatentable under 35 USC 103 over Seamon.

(7) ARGUMENT

In section (10) “response to argument” of the supplemental examiner’s answer mailed August 30, 2007, the examiner has responded to applicant’s arguments that were presented in the appeal brief. The Seamon reference has been applied as anticipatory of applicant’s claimed invention. Applicant appreciates the opportunity to be able to further describe why the Seamon reference does not anticipate because it does not teach each and every element of applicant’s claimed invention, as required of an anticipatory reference.

Front edge of flap is unjoined/unattached

In reply to examiner’s first statement that the “pocket of Seamon does not need a zipper to close the pocket and it will stay in its un-extended position without any closure,” applicant respectfully asserts that, based on the drawings and description of Seamon, the pocket of Seamon does in fact need a zipper to close the pocket and that the pocket of Seamon will not stay in its un-extended position without any closure. Based on paragraph 0010 and the drawings, particularly Figs. 1 and 2, the pocket of Seamon is shown and described as biased *away* from the pouch, which is converse to the direction of applicant’s pocket because applicant’s pocket is tensioned *against* the padfolio and hence *toward* it and not away from it (as applicant illustrates in Figs. 1-2 and describes on page 5, lines 24-28).

Paragraph 0010 of Seamon clearly states that when the zipper is opened, the pocket 11 *swings out from the surface of the pouch* and is **held back** from full extension by straps 14 (emphasis added). This clearly illustrates that without the zipper (“when the zipper is opened”), the pocket swings **out** from the pouch, thereby indicating that the pocket cannot maintain the un-extended position without the zipper because as soon as the zipper is opened, the pocket swings

out. Furthermore there are straps 14 provided that prevent the pocket from full extension. This further implies that if these straps were not here, the pocket would swing out completely to a fully-extended position. Therefore, it is entirely unclear how the pocket of Seamon may be maintained in its unextended position without the closure (the zipper). And thus the Seamon reference does not anticipate the element of a pocket having a front edge that is unjoined to the exterior because it cannot be maintained in the position without the closure (meaning it is “attached”), and thus does not anticipate it.

Elastic Strips

In reply to examiner’s second statement that the Seamon reference does in fact disclose elastic strips (straps 14 of Seamon), applicant respectfully asserts that the Seamon reference does not anticipate this element because there is no contemplation in the Seamon reference to the straps 14 having any “elastic” stretch or structure.

Although “common sense” may imply that the straps “would be for the purpose of allowing the exterior pocket to be stretched out so the contents could be removed easily,” a thorough reading of the Seamon reference teaches that the purpose of the “straps” 14 is to prevent the pocket from undergoing further extension (Seamon paragraph 0010). The straps 14 of Seamon perform an entirely opposite function of preventing the pocket from further extension which is converse to the purpose of applicant’s elastic strips, which generate *tension* to maintain a holding friction *against the documents*. A reading of the Seamon reference describes that the straps 14 in fact maintain the pocket in an *extended position* that is stopped from further extension beyond an already opened orientation, while conversely the elastic strips 170 of applicant’s claimed invention maintain the pocket in an *un-extended position*. Furthermore, the

straps 14 of Seamon do not need to be elastic to perform this function of preventing the exterior pocket from hanging open. The straps 14 could just as easily be of any fabric as they are simply holding the pocket from swinging open entirely.

Concluding that the straps 14 of Seamon are elastic, as argued by the examiner, is not the only logical conclusion. Not only is this nowhere contemplated by the Seamon reference, but the description in paragraph 0010 states that when the zipper is opened, the pocket *swings out*, so one could just as logically conclude that the straps are not elastic because if they were elastic, the pocket would be tensioned against the pouch, instead of swinging out away from the pouch as soon as the zipper is opened, as illustrated in Fig. 2 of Seamon. A strap of non-elastic material is just as easily inferred, if not more likely, to hold the pocket back from full extension as it would not allow the pocket to move even further.

Additionally, based on the fact that the straps 14 allow the pocket to be held back from full extension (Seamon paragraph 0010), one would logically conclude that the straps 14 are in fact not elastic because, as stated above, once the zipper is removed the pocket swings out of an extended position. It is entirely speculative to conclude that the straps 14 must be elastic because they are stretched out in Fig. 2 and contained within the pocket in Fig. 1. It is entirely possible that due to gravity alone the straps 14 fall into the pocket and out of the way of the zipper or that they are constructed and arranged in such a way that they automatically fold inwards, away from the zipper, when the pocket is brought into close proximity with the pouch. It is also feasible that the user simply tucks in the straps and then manipulates the zipper. Therefore, the straps 14 being elastic is not the only logical conclusion.

Intended Use

Applicant respectfully asserts that the recitation of intended use, of receiving documents and of partially revealing whether at least a single document is held within the pocket, *does* result in a structural difference between the claimed invention and the prior art, contrary to the examiner's conclusion otherwise.

As to the first intended use, to be able to receive documents, as claimed and described by applicant, applicant provides a novel flap ("pocket" of Seamon) having a front edge that is unjoined or unattached to the exterior surface such that documents may be received through the flap. Applicant further provides elastic strips that generate tension to maintain a holding friction against the documents. The Seamon reference is not capable of performing this intended use and thus does not meet the claim.

The Seamon reference does not perform the intended use because it does not receive documents and generate tension to maintain a holding friction against the documents. For the Seamon reference to be able to perform the intended use of receiving and retaining documents, it would have to employ the zipper 13, or another "closure," and would therefore not anticipate applicant's claimed invention because it would be attached, converse to applicant's flap having a front edge that is unjoined or unattached, as described and claimed in claims 21 and 22. As stated previously, the Seamon reference requires the use of the zipper to retain the documents because the "straps" 14 do not generate any tension on the contents of the pocket and thus do not receive the documents through an unjoined or unattached front flap and further do not retain the documents in the manner as claimed and described by applicant.

With respect to the second intended use, to partially reveal whether at least a single document is held within the pocket, applicant respectfully asserts that this intended use also results in a structural difference between the claimed invention and the prior art, which is that each side edge of the pocket flap of applicant's claimed invention has a recess taper.

Applicant reiterates that this recess taper is nowhere contemplated in the Seamon reference and therefore the Seamon reference is not anticipatory because it does not teach this claim element. Additionally, applicant respectfully asserts that the tapered gap is not merely a change in shape that would be obvious to one ordinarily skilled in the art as this novel shape has a functional purpose and is not purely aesthetic. For example, a taper allows for a wider base and stronger attachment of the hinged section while still enabling document visibility in the upper regions of the flap.

Applicant provides a novel pocket configuration where not only is the front edge of the pocket flap unjoined to the exterior surface so that documents may be received therethrough, as articulated above, but also each side edge of the flap has a recess taper to partially reveal whether a document is held within the pocket, when the flap is tensioned against the exterior surface.

Applicant respectfully asserts that this recitation is not contemplated in the Seamon reference. By definition, the outer zipped cover of Seamon *must* cover the pages inside of the pocket to allow it to be zipper closed without being obstructed by documents, and therefore Seamon does not reveal, in any respect, whether there are any documents held within the pocket, in direct contrast to applicant's claimed structure. Thence, this pocket configuration of Seamon does not enable documents to be viewed and thus does not anticipate applicant's claimed invention.

Therefore applicant's intended uses do result in a structural difference from the Seamon reference, of the pocket flap having an unjoined front edge and a recess taper on each side edge to retain and partially reveal a document within the pocket, which renders the applicant's claimed invention patentably distinguishable over the prior art.

(8) CLAIMS APPENDIX

1 21. A padfolio having an exterior pocket along an exterior cover comprising:
2 a pair of opposing covers joined together by a spine on an edge of each of the
3 opposing covers;
4 the exterior pocket being located on an exterior surface of one of the opposing
5 covers, wherein the pocket is formed by a flap joined along a base edge, the base edge
6 being joined the exterior surface adjacent to the spine;
7 the flap including a front edge unjoined to the exterior surface and thereby
8 constructed and arranged to receive documents through the front edge, the flap further
9 including two side edges, each side edge having a recess taper to partially reveal whether
10 at least a single document is held within the pocket while the flap is tensioned against the
11 exterior surface; and
12 a pair of elastic strips connected between each side edge, respectively, and the
13 exterior surface, the elastic strips generating tension and being constructed and arranged
14 to maintain a holding friction against the documents, and the front edge and the two side
15 edges being unattached to the cover except by the pair of elastic strips while a region in
16 which documents may be viewed is visible along the side edges remote from the straps.

1 22. A padfolio with an exterior pocket along an exterior cover comprising:
2 a flap attached adjacent to a spine of the padfolio, where the flap creates a base
3 edge adjacent to the spine, two side edges, and a front edge;

4 the front edge unattached to the exterior cover, and the front edge being adapted to
5 allow documents to slide into the pocket through the front edge;
6 an outer perimeter edge stitched on the exterior cover in an approximately
7 rectangular shape with one side adjacent to the base edge and the approximately
8 rectangular shape being slightly larger than the flap; and
9 the two side edges being unattached except by a pair of elastic strips attached
10 between plies of the flap and the outer perimeter edge, and the two side edges including a
11 taper defined as a gap between the outer perimeter edge and the side edge being narrower
12 at the base edge and wider at the front edge, the taper partially revealing at least a single
13 document within the pocket when the flap is tensioned against the exterior cover by the
14 elastic straps.

1 23. The padfolio of claim 22, wherein the elastic strips being configured with a width
2 less than half a length of the side edge.

1 24. The padfolio of claim 22, wherein the gap being configured by a width of the base
2 edge being greater than a width of the front edge.

1 25. The padfolio of claim 24, wherein the gap being generated by an angle between
2 approximately 2 and 5 degrees.

(9) EVIDENCE APPENDIX

None.

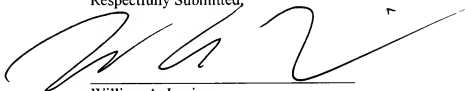
(10) RELATED PROCEEDINGS APPENDIX

None.

Should any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney for applicant at 603-225-4334 so that such issues may be resolved as expeditiously as possible.

Please charge any fee or fee deficiency that is otherwise unpaid to Deposit Account Number 502834.

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to read 'W. Loginov', written over a horizontal line.

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